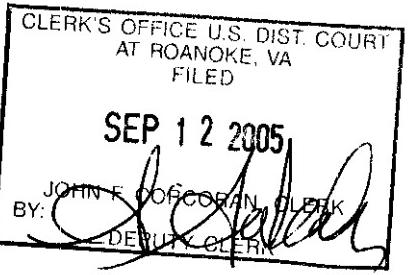


IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION



RODNEY VICTOR HARRIS,)
Plaintiff,) Civil Action No. 7:04CV00266
v.)
JIM H. GUYNN, JR.,)
Defendant.) **ORDER**
By: Hon. James C. Turk
Senior United States District Judge

This matter is before the court on plaintiff Rodney Victor Harris' February 18, 2005 motion for a hearing regarding the dismissal order of February 14, 2005, and motion for reconsideration of the dismissal of this 42 U.S.C. § 1983 action. The court dismissed this action without prejudice because Harris failed to properly serve defendant Jim H. Guynn. See Fed. R. Civ. P. 4(c)-(d), (m). The court construes Harris' motion for reconsideration as a motion to alter or amend judgment pursuant to Federal Rule of Civil Procedure 59(e). Harris contends that the court erred by dismissing this action and that he properly served Guynn.

A Rule 59(e) motion may be granted "(1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice." Irving v. U.S., 2005 U.S. Dist. LEXIS 6699, *25 (E.D. Va. 2005) (citing, Hutchinson v. Staton, 994 F.2d 1076, 1081 (4th Cir. 1993) (internal quotations omitted)). Harris failed to properly serve Guynn pursuant to Federal Rule of Civil Procedure 4; thus, the court finds that Harris has failed to establish any grounds for relief pursuant to Rule 59(e). Therefore, it is **ORDERED** that Harris' motions are **DENIED**.

The Clerk is directed to send certified copies of this order to the plaintiff and counsel of

record for the defendant, if known.

ENTER: This 12th day of September, 2005.



SENIOR UNITED STATES DISTRICT JUDGE